IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

WILLIAM BREHM and GERALDINE BREHM, as Trustees and Custodians,

Plaintiffs,

v.

MICHAEL D. EISNER, MICHAEL S. OVITZ, ROY E. DISNEY, STANLEY P. GOLD, SANFORD M. LITVACK, RICHARD A. NUNIS, SIDNEY POITIER, IRWIN E. RUSSELL, ROBERT A.M. STERN, E. CARDON WALKER, RAYMOND L. WATSON, GARY L. WILSON, and STEPHEN F. BOLLENBACH,

Defendants,

\- and -

THE WALT DISNEY COMPANY,

Nominal Defendant.

C.A. No. 15452 NC

STOCKHOLDERS' DERIVATIVE COMPLAINT

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Plaintiffs, by their undersigned attorneys, for their complaint against defendants, allege the following upon information and belief, except as to allegations concerning plaintiffs, which are alleged upon plaintiffs' knowledge:

NATURE OF THE ACTION

1. This is a stockholders' derivative action brought on behalf of nominal defendant The Walt Disney Company ("Disney" or the "Company"). The individual defendants in this action are certain current and former members of the board of directors of Disney (the "Board") who face and/or faced disabling conflicts of interest and acted with gross negligence, recklessness and/or bad faith in negotiating, adopting and/or seeking to abide by the

employment agreement (the "Employment Agreement") challenged herein.[1]

2. Plaintiffs charge that the Former Director Defendants breached the fiduciary duties of loyalty, good faith and care they owe to Disney and wasted the Company's assets by causing Disney to enter into an onerous and unconscionable Employment Agreement with defendant Michael S. Ovitz that will result in severance payments to Ovitz of between <u>$84 and $130 million or more</u> in present or future compensation for <u>fourteen months</u> of what by all accounts was undistinguished and unproductive service by Ovitz in his role as the Company's President. The Former Director Defendants comprised a majority of the Old Board and dominated the Old Board's decision-making process with respect to the adoption and/or ratification of the Employment Agreement.

3. Thereafter, all of the Current Director Defendants wrongfully caused Disney to fulfill the Employment Agreement, which has enabled or will enable Ovitz to receive compensation which is

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[1] The directors of Disney at the time the Employment Agreement was negotiated, executed, voted upon and/or ratified by the Company's Board are collectively referred to herein as the "Old Board." The Old Board consists of defendants Michael D. Eisner, Stephen F. Bollenbach, Roy E. Disney, Stanley P. Gold, Sanford M. Litvack, Richard A. Nunis, Sidney Poitier, Irwin E. Russell; Robert A.M. Stern; E. Cardon Walker; Raymond L. Watson; and Gary L. Wilson (collectively, the "Former Director Defendants"), together with the following outside directors who are not defendants herein: Reveta F. Bowers; Ignacio E. Lozano, Jr.; and George J. Mitchell. The current directors of Disney are collectively referred to herein as the "Current Board." The Current Board consists of defendants Ovitz, Eisner, Disney, Gold, Litvack, Nunis, Poitier, Russell, Stern, Walker, Watson and Wilson (collectively, the "Current Director Defendants"), together with the following non-defendants: Leo J. O'Donovan; Thomas S. Murphy; Bowers; Lozano; and Mitchell. The Former Director Defendants and the Current Director Defendants are collectively referred to herein as the "Individual Defendants."

so egregiously excessive as to constitute waste and spoliation of Disney's resources.

4. At the time the Former Director Defendants originally approved the Employment Agreement, Ovitz was an untested entertainment executive who had never held any executive position at a public corporation, much less a multi-billion dollar international operation such as Disney. Furthermore, the Former Director Defendants were well aware that numerous high-level executives had been unable to work cohesively with defendant Michael D. Eisner, the Company's Chairman and Chief Executive Officer, and had therefore left Disney in the months immediately preceding the appointment of Ovitz or completed their departure from the Company in the time period immediately following his appointment. Likewise, the Former Director Defendants were well aware that the entertainment industry has historically been characterized by rapid turnover in the executive ranks as employees have frequently moved from opportunity to opportunity in search of higher prestige or higher-paying positions. In agreeing to the Employment Agreement, the Former Director Defendants willfully, recklessly and in bad faith disregarded these obvious circumstances. The misconduct of the Former Director Defendants was particularly egregious because the vast majority of Ovitz's compensation consisted of options to acquire Disney stock, yet the Former Director Defendants failed to guarantee that the Employment Agreement contained conditions to ensure that Disney would receive the consideration which it contemplated from the grant of options to Ovitz.

5. The Current Board -- which is dominated by the Current Director Defendants, who comprise a majority of its members -- has since compounded the wasteful, injudicious and imprudent decision to cause Disney to enter the Employment Agreement. The Current Director Defendants have permitted the untested Ovitz to leave Disney after a brief and undistinguished tenure as Disney's President with his pockets brimming with tens, if not hundreds, of millions of dollars in Disney resources. The Current Director Defendants have failed to take all reasonable steps necessary to minimize or eliminate the payments that the Company will make to Ovitz in light of his early and precipitous separation from employment with Disney. Ovitz's early separation from Disney presented the Current Director Defendants with an opportunity to discharge their fiduciary obligations by ensuring that Disney would not suffer from the terms of the Employment Agreement in light of Ovitz's patent failure to perform and bad faith. Unfortunately, the Current Director Defendants have disregarded or abdicated their fiduciary responsibilities to the Company by failing to undertake any steps to minimize or eliminate Disney's financial exposure to Ovitz, although such steps are plainly and properly available to Disney and the Board. Those alternatives could have greatly reduced or eliminated the unconscionable severance payments to Ovitz and were warranted because he clearly had not earned his unconscionable severance package, which advances no legitimate corporate purpose.

6. Disney will suffer severe and irreparable injury if the Current Director Defendants are permitted to follow through on

their intention to cause Disney to honor the onerous terms of the Employment Agreement as if Ovitz were blameless and as if Disney had received fair and adequate consideration for the options which Ovitz is receiving as part of his severance package. Plaintiffs accordingly bring this action on behalf of the Company to, inter alia, enjoin the fulfillment and enforceability of the Employment Agreement, seek a declaration as to the invalidity of the options granted to Ovitz, and prevent the Individual Defendants from continuing their wasteful and wrongful course of conduct.

PARTIES

7. Plaintiffs William Brehm and Geraldine Brehm are shareholders of in excess of 2000 shares of Disney common stock in their capacities as custodians and/or trustees. Plaintiffs have owned the common stock of Disney or one of its predecessor companies, Capital Cities/ABC Inc. ("Capital Cities"), at all times material to the allegations of this Complaint. Certain of the Disney shares held by William Brehm, as custodian, became Disney shares by operation of law at the time Disney acquired Capital Cities on February 9, 1996. Prior to Disney's acquisition of Capital Cities, William Brehm, as custodian, had held the shares of Capital Cities common stock that became Disney shares by operation of law for a number of years.

8. Nominal defendant Disney is a Delaware corporation with its principal place of business located at 500 South Buena Vista Street, Burbank, California. Disney identifies itself in its filings with the Securities and Exchange Commission ("SEC") as "a diversified international entertainment company with operations in

three business segments: Creative Content; Broadcasting; and Theme Parks and Resorts." According to Disney's SEC filings, "[t]he Company's three different operating segments market the Company's trademarks, characters, products and services as part of a cohesive effort to generate stockholder value through synergy."

9. Defendant Eisner is the Company's Chairman of the Board and Chief Executive Officer. Eisner has served in those roles since 1984 and has earned the respect and loyalty of the Current Board by significantly increasing the Company's profitability during his tenure at Disney.

10. Defendant Ovitz continues to serve as the Company's President and a Disney director. He has served as President since October 2, 1995. Prior to his employment at Disney, Ovitz founded and served as Chairman of Creative Artists Agency ("CAA"), a firm of talent agents, from 1975 through 1995. As explained in greater detail below, Ovitz and Disney announced on December 12, 1996 that Ovitz will leave Disney, effective January 31, 1997.

11. Defendant Stephen F. Bollenbach is the former Senior Executive Vice President and Chief Financial Officer of Disney. Bollenbach served in those positions, and as a Disney director, from approximately April of 1995 until February of 1996. In those capacities, Bollenbach was generously compensated by the Company. A significant percentage of Bollenbach's compensation from Disney was paid in the form of a discretionary annual bonus that depended, in large part, upon the recommendation of defendant Eisner. Accordingly, Bollenbach did not act independently in voting in

favor of or ratifying the terms of the Employment Agreement, which Eisner had espoused and endorsed.

12. Defendants Eisner, Bollenbach, Roy E. Disney, Stanley P. Gold, Sanford M. Litvack, Richard A. Nunis, Sidney Poitier, Irwin E. Russell, Robert A.M. Stern, E. Cardon Walker, Raymond L. Watson and Gary L. Wilson were members of, constituted a majority of and dominated the deliberations of the Old Board.

13. Defendants Ovitz, Eisner, Disney, Gold, Litvack, Nunis, Poitier, Russell, Stern, Walker, Watson and Wilson are members of, constitute a majority of and dominate the deliberations of the Current Board.

14. Each of the Former Director Defendants voted in favor of or ratified the terms of the Employment Agreement at or about the time it was entered into by Disney in October 1995. Each of the Current Director Defendants has failed to undertake reasonable efforts to minimize or eliminate Disney's payments to Ovitz under the Employment Agreement since the announcement of his impending and early termination of services to Disney.

15. Ovitz was not a Disney director at the time the Employment Agreement was entered into between him, acting in his personal capacity, and Disney. He joined the Board thereafter. Ovitz is named as a defendant in this action for violating his fiduciary duties to Disney by insisting upon receiving exorbitant and unwarranted financial benefits which wasted Disney's assets and constituted acts of unfair dealing by or induced by Ovitz.

16. Bollenbach resigned from his post as a Disney director before Ovitz agreed to leave his position as Disney's President.

Bollenbach is therefore named as a defendant in this action solely with respect to the actions he undertook in approving and/or ratifying the terms of the Employment Agreement during his tenure as one of Disney's directors.

17. By virtue of their positions as directors and/or officers of the Company, all of the Individual Defendants named as defendants herein have had and have exercised, throughout the course of their affiliation with the Company, the power to control and influence the Company's actions in negotiating, considering, approving, ratifying and seeking to enforce the Employment Agreement. Throughout the course of their affiliation with the Company, the Individual Defendants owed Disney fiduciary obligations of loyalty, good faith and due care. As a result, during their respective tenures as Disney directors and officers, all of the Individual Defendants were required to: (a) use their ability to control and manage the Company in a fair, just and equitable manner; (b) act in furtherance of the best interests of Disney and its shareholders; (c) refrain from abusing their positions of control; and (d) not favor their own interests or personal concerns, or those of their fellow officers and directors, at the expense and to the detriment of the Company and its shareholders.

18. Each of the Individual Defendants breached the foregoing fiduciary obligations owed to the Company and wasted its assets by: (a) with respect to the Former Director Defendants, negotiating, approving and/or ratifying the Employment Agreement; (b) with respect to all of the Individual Defendants, failing to adequately

monitor, oversee and supervise the work of Ovitz to ensure that Disney received benefits commensurate with the enormous payments promised to Ovitz; and/or (c) with respect to the Current Director Defendants, failing to undertake all reasonable steps necessary to minimize or rescind any obligation by Disney to pay the amounts purportedly owed to defendant Ovitz following the determination that he would leave his position as the Company's President after only brief and unproductive service in that position.

THE FACTS AND CIRCUMSTANCES THAT SUPPORT THE CLAIMS ALLEGED BY PLAINTIFFS

19. In or about September of 1995, Ovitz was hired by Disney to serve as the Company's President. Ovitz commenced his employment at Disney on October 2, 1995. Prior to that time, Ovitz was the Chairman of CAA, a firm primarily engaged in performing the services of agents for persons employed in the entertainment industry. Defendant Eisner was actively involved in the decision to hire Ovitz as his second-in-command. Ovitz was a close personal friend of Eisner for over two decades prior to commencing his employment at Disney and Eisner's desire to work closely with his friend was an instrumental factor in causing Ovitz to join Disney's management team.

20. Prior to that time, CAA was one of Hollywood's most important talent agencies and Ovitz was frequently referred to during his tenure at CAA as "Hollywood's most powerful man." Nevertheless, before commencing his employment at Disney, Ovitz had no experience in working as an officer of a public corporation, much less one the size and scope of Disney, which is a multi-billion dollar, multi-national corporation with businesses in

diverse areas of the entertainment and leisure industries. Moreover, prior to commencing his employment at Disney, Ovitz had no experience in many of the principal businesses in which Disney is involved, including the Company's vast and highly-popular theme park operations. Furthermore, Ovitz had previously functioned as a virtual kingpin in his limited domain as a talent agent and within CAA and had no track record as a second-in-command. At the same time, even prior to Ovitz's hiring by Disney, Eisner had demonstrated little or no capacity to work with important or well-known lesser executives, adding further fuel to an already volatile and unstable situation.

21. Despite Ovitz's status as a relative neophyte in the corporate world, and the significant executive turnover which had characterized Disney's operations since Eisner became Disney's Chairman and CEO, Disney signed Ovitz to the ill-conceived, long-term Employment Agreement, which lavished him with benefits that vastly exceeded any conceivable value that Ovitz could possibly have contributed to the Company. Worse yet, the Employment Agreement permitted Ovitz, an untested executive used to being the unquestioned leader of a much smaller, less diversified business, to leave Disney after only a brief tenure at the Company <u>with a severance package equal to or greater than the benefits to which he would have been entitled had he served out the full term of the Employment Agreement, which was scheduled to run through September 30, 2000</u>.

22. The decision to permit Ovitz such a lucrative exit opportunity early in his tenure as Disney President was a

particularly egregious waste and diminution of Disney's assets in light of the recent history of high-level executive departures during Eisner's tenure and the substantial risk that Ovitz could not or would not serve out the full five-year term of the Employment Agreement because of the problems and impediments already noted.

23. In April of 1994, Disney's President, Frank G. Wells, was tragically killed in a helicopter crash. Since that time, Disney's executive offices have been in constant turmoil. First, the Chairman of Disney Studios, Jeffrey Katzenberg, left the Company in August 1994 after his campaign to be named Wells's successor as Disney's President was rebuffed by Eisner, who resented and opposed Katzenberg's aspirations to equal or surpass Eisner as an industry force. At that time, Eisner assumed the duties that Wells had performed as Disney President.

24. In March of 1995, Richard Frank, the Chairman of Disney's television and telecommunications divisions, resigned. Public reports indicated that Frank's departure from the Company was a direct result of Eisner's aggressive, hands-on management style.

25. In April 1995, defendant Bollenbach became the Company's Senior Executive Vice President and Chief Financial Officer and was elected to the Board. Bollenbach's tenure with the Company lasted but ten months. He left Disney in February 1996.

26. Thus, in the months immediately preceding and following Disney's hiring of Ovitz, the Individual Defendants were provided with several examples of rapid turnover in the senior executive ranks at Disney. Nevertheless, the Former Director Defendants --

who, as specified below, constituted a majority of the Old Board and who were either Disney employees or faced other disabling conflicts of interest -- agreed to structure the Employment Agreement with Ovitz in a manner that did not effectively bind him to the Company and gave him no real incentive to provide Disney with long-term services or to create significant value for the Company. Indeed, Ovitz was afforded the opportunity to garner enormous personal profit without delivering any corresponding benefit or consideration to Disney. Rather, the Employment Agreement was structured in a manner that encouraged Ovitz's early departure.

27. The terms of Ovitz's employment with Disney were embodied in the Employment Agreement, which is dated October 1, 1995. As was specified in the Employment Agreement, Ovitz was eventually nominated by Disney to serve as a director. Subsequently, Ovitz was elected to and presently holds that position.

28. The Employment Agreement called for Ovitz to receive a generous compensation package for performing services as the Company's President, but one not nearly so generous as the severance package he was to receive in the event his employment with Disney was terminated for any reason other than cause before the contract expired on September 30, 2000.

29. Pursuant to the Employment Agreement, Ovitz's annual salary as Disney President was set at $1 million. In addition, he was to receive a discretionary bonus at the end of each full year he served as the Company's President. The Employment Agreement also called for Ovitz to receive options to purchase 3 million

shares of Disney common stock at the market price as of October 16, 1995 (approximately $57). Those options were scheduled to vest in increments of 1 million shares on September 30 of each year, commencing September 30, 1998. However, as explained in greater detail below, the Current Director Defendants have permitted the vesting of the options to accelerate as a result of Ovitz's purported resignation from his position as Disney's President and based upon the provisions of his purported Employment Agreement.

30. From the outset, Ovitz's performance as Disney President was undistinguished and unproductive. For example, The Wall Street Journal reported in its December 12, 1996 edition that "[Ovitz's] relationship with Disney Chairman Michael Eisner has seemed strained at times and Ovitz has had difficulties in carving out a clear role for himself at the company." In fact, the same Wall Street Journal article stated:

> Over time, however, it has been difficult to see how Ovitz fits at Disney. He hasn't been intimately involved in the company's core film, television and theme-park business, forcing him to be entrepreneurial as he searched for a role. But Ovitz's efforts in those areas -- such as finding a way to shore up Disney's music business -- have been slow in developing.

31. A December 23, 1996 article in The Boston Globe agreed completely with the assessment of Ovitz's performance delivered by The Wall Street Journal. The Globe article stated, "By all accounts, Ovitz seemed unable to adapt to the relatively free-wheeling Disney corporate culture or to subsume himself as second-in-command." Likewise, in an article that appeared in the December 23, 1996 edition of Time magazine, defendant Bollenbach, who, at the time Ovitz was hired, was a Disney director and the Company's

CFO stated, "Michael Ovitz didn't understand the duties of an executive at a public company, and he didn't want to learn."

32. As a result of Ovitz's inability to adequately perform his duties as Disney President -- or even to determine what the nature of those duties were -- Ovitz began to seek alternative employment in the entertainment industry with one or more companies well before his "resignation" from the Company was announced. Ovitz's attempts to procure alternative employment were induced by his growing recognition of his failure to contribute to Disney's operations and inability to function within his roles at Disney.

33. As a result of Ovitz's failure to perform and fulfill his duties as Disney President, as specified in the Employment Agreement, and the existence of public reports that Ovitz was seeking alternative employment, Ovitz and Eisner met to discuss the terms of Ovitz's separation from the Company on the evening of December 11, 1996.

34. During the course of a four-hour meeting held at Eisner's apartment in New York City, Ovitz and Eisner agreed to abruptly put an end to Ovitz's tenure as an employee and executive of the Company. Thus, Ovitz served as Disney's President for only approximately fourteen months. In announcing Ovitz's "resignation," Disney stated that there were no plans to name a replacement to his position as President, thereby effectively admitting the lack of any real need for the position Ovitz had been selected to fill and Ovitz's failure, throughout the course of his employment as Disney's President, to undertake or provide any significant management services.

35. The discussions surrounding Ovitz's departure from the Company presented an ideal and compelling opportunity to revisit the unconscionable and onerous terms of the Employment Agreement, particularly given Ovitz's desire to pursue alternative opportunities. Nevertheless, Eisner, Ovitz and the other Current Director Defendants -- all of whom are Disney employees or face other disabling conflicts of interest related to their financial relationships with Disney or their fellow directors -- failed to demand that the financial terms of Ovitz's severance package be renegotiated to more accurately reflect Ovitz's "contribution" to the Company during his brief tenure as President.

36. Nor was any consideration given to the possibility of repudiating the options granted to Ovitz as void ab initio or asserting that Ovitz's dismal performance had denied Disney of the benefit of its bargain or created circumstances that constituted or warranted a "for cause" dismissal, with corresponding diminution in Ovitz's financial benefits. In that regard, it is particularly noteworthy that the Employment Agreement required Ovitz to "devote his full time and best efforts exclusively to the Company." Furthermore, the Employment Agreement provided that, in the event Ovitz breached the contract provision with respect to the exclusivity of his services to the Company, Disney was entitled to injunctive and legal relief against him.

37. Thus, Ovitz's meetings with other potential employers in the weeks preceding his resignation from Disney amounted to a breach of his obligations under the Employment Agreement that permitted the Company to cancel the Employment Agreement and

discharge Ovitz "for cause," as that term is defined in the Employment Agreement. Despite the substantial financial benefits that would have been realized by the Company had Ovitz's departure been deemed to have occurred "for cause," the Current Director Defendants gave no consideration to exercising the Company's right to discharge Ovitz for cause because of Eisner's domination of the Board and unilateral decision-making concerning the terms of Ovitz's termination.

38. Thus, what at first glance appeared to be a significant setback for Ovitz was subsequently revealed to be a financial bonanza for him as a result of the unconscionable and onerous terms of the Employment Agreement which the Current Director Defendants have agreed to honor, without any serious exploration of Disney's legal alternatives under the circumstances.

39. Importantly, because Ovitz's resignation from his post as President purportedly qualifies as a "Non-Fault Termination" as that term is defined in the Employment Agreement, the options to purchase 3 million shares of Disney common stock discussed above have become immediately exercisable. Notably, those options are priced at the market price of Disney common stock as of October 16, 1995 (approximately $57) and are consequently already worth approximately $15 per share if exercised immediately. The Current Director Defendants have failed to avail themselves of any steps to render those lucrative stock options null and void.

40. In addition, the Employment Agreement purportedly entitles Ovitz to substantial cash compensation, including:

- a "Contract Termination Payment" of $10,000,000;

- a "Non-Fault Payment" equal to the present value of all base salary due to Ovitz through the end of the Employment Agreement on September 30, 2000 plus the present value of an assumed annual bonus of $7,500,000 for all fiscal years not completed at the time Ovitz leaves the Company; and

- a bonus for his services during the one full fiscal year he served as the Company's President.

41. By any estimation, the Employment Agreement is a windfall for Ovitz and a gross waste of the Company's assets.

42. In effect, the Employment Agreement calls for Ovitz to receive a cash payment of approximately $38 million plus the undetermined "bonus" for the services he provided Disney during fiscal 1996. Moreover, based upon Disney's closing stock price on December 23, 1996 ($72), the value of the stock options purportedly owed to Ovitz under the Employment Agreement if exercised immediately is in excess of $46 million. Thus, the total compensation Ovitz will receive from Disney should the terms of the Employment Agreement be enforced has frequently been reported to be in the range of $80-$90 million.

43. However, a more sophisticated, and more accurate, approach to calculating the value of the stock options held by Ovitz as a result of his resignation is to formulate a present value for those options pursuant to commonly-accepted valuation techniques, such as the Black-Scholes option pricing model. As was reported by the Associated Press on December 20, 1996, that model yields the conclusion that the options awarded to Ovitz under the Employment Agreement have a present value of approximately <u>$92 million</u>.

44. Accordingly, a more accurate calculation of the total value of Ovitz's severance payment for his mere fourteen months of unproductive service to Disney adds the $38 million in cash payments to which he is purportedly entitled to the $92 million in stock options he has been awarded and the additional "bonus" compensation Ovitz will receive for his services in the fiscal year ended September 1996.

45. Thus, Ovitz's total severance package exceeds **$130 million**, or approximately $0.09 per Disney share. By comparison, the total quarterly dividend presently paid by Disney amounts to only approximately $0.11 per share. That fact caused the Chicago Sun-Times to query in a December 16, 1996 article, "If you were -- or are -- a Disney shareholder, would it be worth it to you to give up a quarterly dividend so that Michael Ovitz could do nothing for you?"

46. The Chicago Sun-Times is far from alone in condemning the unconscionable, onerous and one-sided terms of the Employment Agreement as they are now being implemented. The following are merely a few examples of the scores of articles that have expressed surprise and outrage at the terms of Ovitz's generous severance package:

- the Associated Press reported on December 20, 1996 that "Mark Lipis, a Los Angeles compensation expert, said Ovitz's compensation package 'is unconscionable. I can't believe they're actually going ahead with it the way it's been reported'";

- the December 13-15 edition of The Hollywood Reporter stated, "Ovitz's reported settlement stunned most observers";

- one source quoted in The Hollywood Reporter article stated that the severance package was "a corporate embarrassment that would be paid for by shareholders";

- according to a December 16, 1996 article in The Wall Street Journal, Vidette Mixon, a spokeswoman for the General Board of Pension and Health Benefits of the United Methodist Church stated that "it would be difficult to justify such a compensation package";

- in the same article, Tom Van Dyke, co-founder of the firm Progressive Asset Management, called the compensation package "perverse" and added, "Mickey's pocket has been picked by a Hollywood hype man, while the shareholders and employees who give their life to work at Disney stand by and watch";

- a December 25, 1996 article in The Washington Post stated that "the contract transcends wretched excess" and that "[t]he lavish severance package simply defies normal bounds of propriety and common sense";

- a December 25, 1996 article in The San Diego Union-Tribune added, "[Ovitz] walks away with a combination of cash and stock options that will set new records even in an era of golden parachutes."

47. The sheer absurdity of the terms of the Employment Agreement was captured by the article in The San Diego Union-Tribune, which noted that, even if the amount of Ovitz's compensation package were assumed to be a conservative $90 million, he will be paid $295,000 per day for each work day since he joined Disney in October 1995, although he accomplished virtually nothing of consequence during that time.

48. In fact, Ovitz's severance package has become such a national scandal that the front page of the Sunday, December 29, 1996 edition of The New York Times "Money and Business" section declared the entire situation one of the "Financial Follies of '96." In addition to awarding defendants Eisner and Ovitz that

dubious "honor," The New York Times lampooned them in the following cartoon, which holds bitter humor for Disney and its shareholders:

49. The unconscionable and wasteful nature of the compensation that Ovitz is purportedly entitled to receive is further demonstrated by the fact that Disney has no immediate plans to replace him or fill the vacant position of President, thus calling into question whether any of his duties were in any way essential to the Company's successful performance in the first place.

DEMAND ALLEGATIONS

50. The causes of action alleged herein are brought derivatively in the name and in the right of Disney. Disney is named as a nominal defendant solely in a derivative capacity.

51. Plaintiffs will adequately and fairly represent the interests of Disney and its shareholders in enforcing and prosecuting the Company's rights.

52. Any demand on Disney's Current Board to bring the causes of action alleged herein would be futile, and, therefore, is excused because a majority of the members of the Current Board are interested in the wrongdoing alleged herein and/or are incapable of exercising independent business judgment. The members of the Current Board are incapable of exercising independent business judgment because, inter alia: (a) they engaged in the wrongful conduct alleged herein; (b) they are Disney employees beholden to defendant Eisner for substantial compensation; (c) they are professionals who receive substantial compensation from Disney or other Individual Defendants interested in the transactions from which these claims arise; and/or (d) they possess other entangling financial relationships with Individual Defendants interested in the transactions from which these claims arise.

53. The disabling conflicts of interest possessed by the members of the Current Board include the following:

(a) Eisner is a long-time colleague of Ovitz who, at least at the time the Employment Agreement was "negotiated," was a close personal friend of Ovitz. In fact, as Ovitz stated in conjunction with the announcement of his departure from the

Company, "Michael Eisner has been my good friend for 25 years and that will not change. . ." In addition, Eisner was a leading participant in the negotiations that preceded the signing of the Employment Agreement and signed that contract on behalf of Disney. He also negotiated the terms of Ovitz's resignation from the Company with Ovitz. Because his breaches of his fiduciary obligations to the Company directly resulted in the Employment Agreement, and Ovitz's lucrative severance payments, which constitute a waste of Disney's corporate assets and a breach of the fiduciary duties owed by Eisner and Disney's other directors to the Company, Eisner is disabled from considering the Company's options with respect to attempting to render Ovitz's severance payments unenforceable, seeking a legal determination that Ovitz has failed to perform in accordance with the Employment Agreement or otherwise pursuing legal action against those responsible for its oppressive and unfair terms.

(b) Ovitz's self-interest in seeing that the terms of the Employment Agreement are enforced is obvious. As specified above, Ovitz stands to be paid compensation after just one year of service that may range as high as $130 million or more should the oppressive and unconscionable terms of the Employment Agreement be fulfilled. Accordingly, he is unable to act independently in considering the Company's options with respect to rendering his severance payments unenforceable, seeking a legal determination that he has failed to perform in accordance with the Employment Agreement or otherwise pursuing legal action against those responsible for its oppressive and unfair terms.

(c) Roy E. Disney is employed by Disney as Vice Chairman of the Board and as the head of the Company's animation department. In those capacities, he serves under defendant Eisner. Disney was paid $350,000 in salary and $550,000 in bonuses in 1995. In addition, Disney was awarded 200,000 options to purchase Disney common stock, with a value of $5,856,518, assuming a 5% rate of appreciation in the price of Disney stock, and $14,841,567, assuming a 10% rate of appreciation. The terms of Disney's compensation package as a Company employee are dependent, in large part, upon the recommendation of Eisner. Furthermore, Disney voted in favor of or ratified the terms of the Employment Agreement. Accordingly, Disney cannot act independently in considering the Company's options with respect to attempting to render Ovitz's severance payments unenforceable, seeking a legal determination that Ovitz has failed to perform in accordance with the Employment Agreement or otherwise pursuing legal action against those responsible for its oppressive and unfair terms.

(d) Defendant Stanley P. Gold is the President and Chief Executive Officer of Shamrock Holdings, Inc., an entity which was identified in the Company's Form 10-K for the fiscal year ended September 30, 1995 as being "engaged in real estate development and the making of investments." The Form 10-K did not reveal that Shamrock was the wholly-owned investment company of the family of defendant Roy E. Disney. Gold receives directors' fees from the Company in the amount of $27,500 plus $1,000 for every Board or Board committee meeting attended. In addition, he receives grants of options to purchase 2,000 shares of Disney common stock in equal

increments vesting over a five-year period and having a ten-year term for each year he serves as a Disney director. Those options are priced at the market price of Disney common stock on the date the options are granted. Furthermore, Gold voted in favor of or ratified the terms of the Employment Agreement. Thus, like Disney himself, Gold cannot act independently in considering the Company's options with respect to attempting to render Ovitz's severance payments unenforceable, seeking a legal determination that Ovitz has failed to perform in accordance with the Employment Agreement or otherwise pursuing legal action against those responsible for its oppressive and unfair terms.

(e) Defendant Sanford M. Litvack, formerly a lawyer for Disney, has been the Senior Vice President and Chief of Corporate Operations of the Company since August 1994. Beginning in April 1991, he held additional executive positions with the Company. In all of those positions, Litvack served under defendant Eisner. Litvack was paid a salary of $647,115 and a bonus of $1,600,000 in 1995. The amount of Litvack's bonus was determined, in substantial part, on the basis of the recommendation made by defendant Eisner. Furthermore, Litvack voted in favor of or ratified the terms of the Employment Agreement. Accordingly, Litvack cannot act independently in considering the Company's options with respect to attempting to render Ovitz's severance payments unenforceable, seeking a legal determination that Ovitz has failed to perform in accordance with the Employment Agreement or otherwise pursuing legal action against those responsible for its oppressive and unfair terms.

(f) Defendant Richard A. Nunis is the Chairman of Walt Disney Attractions, the arm of the Disney organization that operates the Company's theme parks and resorts. In that capacity, Nunis serves under defendant Eisner. Nunis receives substantial compensation from Disney as a result of his employment by the Company, including significant bonus compensation that is dependent, in large part, upon the recommendation of Eisner. Furthermore, Nunis voted in favor of or ratified the terms of the Employment Agreement. Accordingly, Nunis cannot act independently in considering the Company's options with respect to attempting to render Ovitz's severance payments unenforceable, seeking a legal determination that Ovitz has failed to perform in accordance with the Employment Agreement or otherwise pursuing legal action against those responsible for its oppressive and unfair terms.

(g) Defendant Sidney Poitier, a professional actor, has been a client of the talent agency founded by Ovitz, CAA, for over fifteen years. During that time period, Ovitz and Poitier earned millions of dollars together as a result of contracts for acting, directing and other employment CAA negotiated on behalf of Poitier. In addition, Poitier receives directors' fees from the Company of $27,500 plus $1,000 for every Board or Board committee meeting attended. Furthermore, Poitier voted in favor of or ratified the terms of the Employment Agreement. In addition, he receives grants of options to purchase 2,000 shares of Disney common stock in equal increments vesting over a five-year period and having a ten-year term for each year he serves as a Disney director. Those options are priced at the market price of Disney common stock on the date

the options are granted. As a result, Poitier is impermissibly conflicted in considering the Company's options with respect to attempting to render Ovitz's severance payments unenforceable, seeking a legal determination that Ovitz has failed to perform in accordance with the Employment Agreement or otherwise pursuing legal action against those responsible for its oppressive and unfair terms.

(h) Defendant Irwin E. Russell is an entertainment lawyer who has long served as Eisner's personal attorney and who receives directors' fees from the Company of $27,500 plus $1,000 for every Board or Board committee meeting attended. In addition, Russell received a payment of $250,000 in connection with his role in "negotiating" the Employment Agreement on behalf of Disney. Russell also receives grants of options to purchase 2,000 shares of Disney common stock in equal increments vesting over a five-year period and having a ten-year term for each year he serves as a Disney director. Those options are priced at the market price of Disney common stock on the date the options are granted. Furthermore, Russell voted in favor of or ratified the terms of the Employment Agreement. Because of his close ties to Eisner, the role he played in negotiating the Employment Agreement and the payment he received in connection with that role, Russell is impermissibly conflicted in considering the Company's options with respect to attempting to render Ovitz's severance payments unenforceable, seeking a legal determination that Ovitz has failed to perform in accordance with the Employment Agreement or otherwise

pursuing legal action against those responsible for its oppressive and unfair terms.

(i) Defendant Robert A.M. Stern is an architect who has designed many buildings for Disney that have resulted in his firm (Robert A.M. Stern Architects of New York) collecting millions of dollars in fees from the Company. Those buildings include the Yacht and Beach Club Hotels at the Walt Disney World Resort, the Newport Bay Club and the Cheyenne Hotel at Disneyland-Paris, Disney's Boardwalk Hotel at the Walt Disney World Resort and the Feature Animation Building at the Company's headquarters in Burbank, California. Stern also receives directors' fees in the amount of $27,500 plus $1,000 for every Board or Board committee meeting attended from the Company. In addition, he receives grants of options to purchase 2,000 shares of Disney common stock in equal increments vesting over a five-year period and having a ten-year term for each year he serves as a Disney director. Those options are priced at the market price of Disney common stock on the date the options are granted. Many, if not all, of the buildings for which Stern's firm was chosen as architects by Disney were contracted for during Eisner's tenure as Chairman and Chief Executive Officer of the Company. Moreover, it is within Eisner's power to select or refuse to select Stern's firm as the Company's architects. Furthermore, Stern voted in favor of or ratified the terms of the Employment Agreement. Accordingly, Stern is impermissibly conflicted in considering the Company's options with respect to attempting to render Ovitz's severance payments unenforceable, seeking a legal determination that Ovitz has failed

to perform in accordance with the Employment Agreement or otherwise pursuing legal action against those responsible for its oppressive and unfair terms.

(j) Defendant E. Cardon Walker was a senior executive of Disney for 25 years ending in 1984. During his tenure at Disney, Walker served as Disney's President from 1971 to 1977 and as Chairman of the Board and Chief Executive Officer from 1980 until 1983. From 1984 through 1989, Walker served as a consultant for Disney and performed various projects at the direction of Eisner. Walker receives directors' fees in the amount of $27,500 plus $1,000 for every Board or Board committee meeting attended from the Company. In addition, he receives grants of options to purchase 2,000 shares of Disney common stock in equal increments vesting over a five-year period and having a ten-year term for each year he serves as a Disney director. Those options are priced at the market price of Disney common stock on the date the options are granted. Accordingly, Walker is impermissibly conflicted in considering the Company's options with respect to attempting to render Ovitz's severance payments unenforceable, seeking a legal determination that Ovitz has failed to perform in accordance with the Employment Agreement or otherwise pursuing legal action against those responsible for its oppressive and unfair terms.

(k) Defendant Raymond L. Watson has served as Chairman of the Executive Committee of the Company's Board of Directors since September 1984 and was Chairman of the Board of the Company from May 1983 until September 1984. Watson receives directors' fees in the amount of $27,500 plus $1,000 for every Board or Board

committee meeting attended from the Company. In addition, he receives grants of options to purchase 2,000 shares of Disney common stock in equal increments vesting over a five-year period and having a ten-year term for each year he serves as a Disney director. Those options are priced at the market price of Disney common stock on the date the options are granted. Accordingly, Watson is impermissibly conflicted in considering the Company's options with respect to attempting to render Ovitz's severance payments unenforceable, seeking a legal determination that Ovitz has failed to perform in accordance with the Employment Agreement or otherwise pursuing legal action against those responsible for its oppressive and unfair terms.

(l) Defendant Gary L. Wilson is Co-Chairman of the Board of Northwest Airlines Corporation. From July 1985 through December 1989, Wilson served under defendant Eisner as Executive Vice President and Chief Financial Officer of the Company. Wilson receives directors' fees in the amount of $27,500 plus $1,000 for every Board or Board committee meeting attended from the Company. In addition, he receives grants of options to purchase 2,000 shares of Disney common stock in equal increments vesting over a five-year period and having a ten-year term for each year he serves as a Disney director. Those options are priced at the market price of Disney common stock on the date the options are granted. Accordingly, Wilson is impermissibly conflicted in considering the Company's options with respect to attempting to render Ovitz's severance payments unenforceable, seeking a legal determination that Ovitz has failed to perform in accordance with the Employment

Agreement or otherwise pursuing legal action against those responsible for its oppressive and unfair terms.

54. In addition to the foregoing factors, which demonstrate that a majority of the members of the Current Board suffer from substantial conflicts of interest that prevent them from employing independent business judgment in considering whether to prosecute the claims asserted herein or otherwise remedy the wrongs complained of, the following additional factors, which are applicable to all members of the Current Board, demonstrate that no demand upon the Disney Board to commence the legal claims asserted herein against the Individual Defendants was required because any such demand would have been futile:

(a) The agreement to pay and the payment of the exorbitant sums purportedly due to Ovitz pursuant to the Employment Agreement constituted and would constitute an improvident and inequitable waste and expenditure of Disney's corporate assets, which cannot constitute reasonable business judgment or valid corporate action and which therefore cannot be ratified by the Disney Board. The failure to pursue any and all legal remedies against making such payments constitutes an abdication of fiduciary responsibility and willful or reckless refusal to consider information available to them.

(b) The agreement to pay, the payment by Disney and the acceptance by Ovitz of the sums purportedly owed to him under the Employment Agreement constituted and would constitute a breach of the duty of loyalty owed by Ovitz and each one of the members of the Current Board to Disney. Such conflicts of interest, breaches

of the duty of loyalty and self-dealing, coupled with the passive and supine reaction of the Current Board to the possibility that Ovitz will be paid the grossly excessive severance payments which are purportedly owed to him, establish a lack of any business judgment protection and, consequently, cannot be ratified.

(c) Each member of the Old Board voted in favor of or ratified the terms of the Employment Agreement at or about the time it was entered into by Disney and Ovitz in October 1995. Furthermore, all of the members of the Current Board have failed to fulfill their obligation to undertake all steps reasonably necessary to minimize or eliminate the payment of compensation to Ovitz pursuant to the Employment Agreement, causing gross corporate waste. Thus, each of the Individual Defendants has a strong personal interest in guaranteeing that the claims alleged herein not be brought by the Company and that they, and their fellow directors, not be named as defendants in any action brought by Disney.

(d) At all relevant times, Eisner, who wielded controlling influence in determining the compensation to be paid to Disney employees and in determining what parties would be hired to perform architectural, legal and professional services for the Company, was in a position to and did dominate the Disney Board. Eisner strongly urged the Board to hire his close friend, Ovitz, in 1995. Later, Eisner urged the Board to provide Ovitz with an unduly generous severance package that benefitted Ovitz at the expense of Disney and its shareholders in order to avoid the personal embarrassment that would have resulted from a public

dispute and/or litigation with Ovitz concerning the terms of his severance. As a result, the members of the Current Board failed to counteract Eisner's impulse to buy himself out of an uncomfortable situation using Company money and cannot exercise independent, objective judgment in deciding whether the adoption and fulfillment of the Employment Agreement was and is in the best interests of Disney.

(e) In order to bring this action, the members of the Current Board would have been required to sue themselves and/or their fellow directors who are: (i) allies in the top ranks of Disney's management; (ii) good friends; and (iii) people with whom the Individual Defendants have numerous entangling financial and business relationships.

(f) The members of the Current Board receive payments and other benefits by virtue of their membership on the Board and their association with Disney. With respect to the Company's non-management directors, those payments include an annual directors' fee in the amount of $27,500 plus $1,000 for every Board or Board committee meeting attended from the Company. In addition, all "outside" directors receive grants of options to purchase 2,000 shares of Disney common stock in equal increments vesting over a five-year period and having a ten-year term for each year they serve as Disney directors. Those options are priced at the market price of Disney common stock on the date the options are granted.

(g) The composition of the Disney Board is designed to and does make the members of the Current Board dependent upon and deferential to Eisner, who controls and dominates the process by

which directors are selected and approves their renomination to the Board. Eisner personally chose or endorsed the continuance of each of the members of the Current Board as Disney directors.

(h) Likewise, the composition of Disney's upper-level management is controlled by Eisner. Accordingly, the Individual Defendants who are Disney employees are deferential to Eisner's decision-making because their employment -- and the substantial financial benefits entailed therein -- depend upon Eisner's approval.

(i) The challenged severance payments constitute gross corporate waste which cannot be ratified. Such payments lack any business judgment protection or valid corporate purpose.

FIRST CAUSE OF ACTION

(Breach of the Fiduciary Duties of Loyalty and Good Faith and Aiding and Abetting Such Breach)

55. Plaintiffs repeat and reallege each of the foregoing paragraphs as if fully set forth herein.

56. This claim is asserted derivatively on behalf of Disney against all of the Individual Defendants.

57. The Individual Defendants have individually or in concert, by aiding and abetting or conspiring, breached fiduciary duties of loyalty and good faith owed to the Company and its stockholders by:

(a) with respect to the Former Director Defendants, subordinating the best interests of Disney to their allegiance to defendants Eisner and/or Ovitz by agreeing to the unconscionable and unlawful terms of the Employment Agreement, as was recommended by defendant Eisner to the Board, although that agreement clearly

called for the payment of grossly excessive compensation to Ovitz -- particularly in the event of an early termination of that agreement for any reason other than cause, which was always a likely possibility; and

(b) with respect to the Current Director Defendants, subordinating the best interests of Disney to their allegiance to defendants Eisner and/or Ovitz by agreeing to abide by the terms of the Employment Agreement, as was recommended by defendant Eisner to the Board at or about the time Ovitz agreed to terminate his employment with Disney, although: (i) that agreement calls for the payment of compensation to Ovitz that results in a breach of the fiduciary duties owed by Ovitz and the other Individual Defendants to Disney and a waste of the Company's assets; (ii) the circumstances surrounding Ovitz's departure from the Company (including the fact that he was seeking alternative employment) were sufficient to amount to a "for cause" dismissal within the terms of the Employment Agreement; and (iii) Ovitz's failure to perform and fulfill the duties of Disney's President amounted to a material breach of the Employment Agreement.

58. Each of the Individual Defendants has rendered substantial assistance in the accomplishment of the primary wrongdoing complained of in this Complaint. In taking the actions, as particularized herein, to aid and abet and substantially assist the wrongs complained of, all of the Individual Defendants acted with an awareness of the primary wrongdoing, realized that their conduct would substantially assist the accomplishment of that wrongdoing and were aware of their overall contribution to the

conspiracy, common scheme and course of wrongful conduct alleged by plaintiffs.

59. By reason of the foregoing, the Company has sustained and will continue to sustain serious damage and irreparable injury, for which relief is sought herein.

60. Plaintiffs and the Company have no adequate remedy at law.

SECOND CAUSE OF ACTION

(Breach of the Fiduciary Duty of Loyalty)

61. Plaintiffs repeat and reallege each of the foregoing paragraphs as if fully set forth herein.

62. This claim is asserted derivatively on behalf of Disney against defendants Ovitz and Eisner.

63. As alleged in detail above, the compensation to be paid to Ovitz pursuant to the Employment Agreement is grossly excessive and bears no reasonable relationship to the services that Ovitz has performed for the Company.

64. Prior to the announcement of Ovitz's planned departure from Disney, Ovitz and Eisner, among others, negotiated the terms pursuant to which Ovitz would leave the Company. During that negotiation, which occurred at a time when Ovitz was still a Disney director and therefore owed fiduciary obligations of care and loyalty to the Company, Ovitz insisted upon receiving the exorbitant financial benefits specified above. He did not request or recommend any renegotiation of his lucrative severance benefits in light of his inadequate performance.

65. The negotiation between Ovitz and Eisner presented an ideal opportunity for Disney and Ovitz to reformulate the Employment Agreement in a manner that would not result in a waste of Disney's assets or a breach of the fiduciary obligations owed by the Individual Defendants to Disney. That was particularly true in light of the facts that: (a) the circumstances surrounding Ovitz's departure from the Company (particularly his efforts to seek alternative employment) justified a "for cause" termination under the Employment Agreement; and (b) Ovitz's failure to perform and fulfill the duties of Disney's President amounted to a material breach of the Employment Agreement. Eisner, anxious to eliminate Ovitz from the Company, and desirous of extricating himself from the adverse consequences of his ill-considered decision to hire Ovitz, took no steps to explore legal defenses to the Employment Agreement to improve Disney's bargaining leverage. Rather, because of Ovitz's and Eisner's breach of their fiduciary obligation of loyalty to Disney, the "negotiation" between Eisner and Ovitz resulted in a reaffirmation of the original, unconscionable terms of the Employment Agreement, to Disney's detriment.

66. By reason of the foregoing, the Company has sustained and will continue to sustain serious damage and irreparable injury, for which relief is sought herein.

67. Plaintiffs and the Company have no adequate remedy at law.

THIRD CAUSE OF ACTION

(Waste)

68. Plaintiffs repeat and reallege each of the foregoing paragraphs as if fully set forth herein.

69. This cause of action is alleged by plaintiffs on behalf of Disney against all of the Individual Defendants.

70. Each of the Individual Defendants owe and owed to Disney the obligation to protect the Company's assets from loss or waste.

71. As specified above, by any objective assessment, the compensation to be received by Ovitz as a result of the termination of his employment as President of the Company is grossly excessive and bears no relation to the value of the purported services Ovitz has provided to the Company in exchange for that compensation.

72. Nor are those payments commensurate with any legal obligation (if any) owed to Ovitz because he has materially breached the Employment Agreement and his separation is, or could validly be claimed to be, for cause.

73. The Former Director Defendants' purported ratification of the Employment Agreement constituted a waste of Disney's corporate assets and was grossly unfair to the Company. The contract was structured in a manner which did not give adequate protection to Disney and all but guaranteed Ovitz's early and costly departure. In particular, the value of the options given to Ovitz under the Employment Agreement in exchange for what was received or was to be received is grossly disproportionate and unfair to Disney, and no conditions were set forth in the Employment Agreement to ensure that Disney would receive the consideration for which it bargained.

In fact, the Employment Agreement called for the options to vest under circumstances where Disney could (and did) receive nothing of value in return.

74. In addition, the Current Director Defendants' failure to undertake all reasonable legal steps necessary to assure that Ovitz will not receive the grossly excessive payments purportedly due him under the Employment Agreement, including, but not limited to, the Current Director Defendants' failure to seek a legal determination that Ovitz has breached the terms of the Employment Agreement, or is subject to dismissal for cause, represents another manifestation of the Individual Defendants' pattern of wasting and squandering the Company's assets to serve Eisner's personal interests.

75. By reason of the foregoing, the Company has sustained and will continue to sustain serious damage and irreparable injury, for which relief is sought herein.

76. Plaintiffs and Disney have no adequate remedy at law for the wasteful and wrongful conduct engaged in by the Individual Defendants.

77. Plaintiffs and Disney are therefore entitled to judgment against the Individual Defendants as specified below.

FOURTH CAUSE OF ACTION

(Breach of the Fiduciary Duty of Due Care and Aiding and Abetting Such Breach)

78. Plaintiffs repeat and reallege each of the foregoing paragraphs as if fully set forth herein.

79. This claim is asserted derivatively on behalf of Disney against all of the Individual Defendants.

80. The Individual Defendants have individually or in concert, by aiding and abetting or conspiring, breached the fiduciary duty of care and good faith they owe to the Company and its stockholders by:

(a) with respect to the Former Director Defendants, agreeing to, voting in favor of or taking steps to ratify the Employment Agreement, which (as specified above) provides Ovitz with grossly excessive compensation for his unproductive fourteen months of service to the Company and effectively rewards him for an early departure, when such an early termination was reasonably foreseeable at all relevant times;

(b) with respect to the Former Director Defendants, failing to investigate adequately the possible ramifications of agreeing to the Employment Agreement, including the financial effect upon the Company of a voluntary or forced resignation by Ovitz from his position as the Company's President prior to the natural termination of the agreement; and

(c) with respect to the Current Director Defendants, failing to investigate and pursue all reasonable avenues of legal recourse against Ovitz, or others, for the purpose of minimizing, if not eliminating, the payment of compensation to Ovitz pursuant to the unconscionable, oppressive and unfair terms of the Employment Agreement as originally entered into and now as carried out.

81. The Individual Defendants' approval of or acquiescence to the terms of the Employment Agreement cannot be justified as valid acts of business judgment given the patently excessive severance

compensation the Employment Agreement calls for Ovitz to receive, particularly when considered in light of: (a) Ovitz's brief and undistinguished service to the Company; (b) his limited credentials when he was hired to serve as Eisner's second-in-command; and (c) the material risk that Ovitz would seek to trigger the lucrative "golden parachute" payments he has apparently been able to extract. The Individual Defendants therefore do not enjoy any business judgment protection for their actions, which were reckless and in bad faith in all essential respects and which constitute violations of their fiduciary obligations of due care and, as alleged above, a costly waste of Disney's assets.

82. Each of the Individual Defendants has rendered substantial assistance in the accomplishment of the primary wrongdoing complained of herein. In taking actions to aid and abet and substantially assist the wrongs complained of, all of the Individual Defendants acted with an awareness of the primary wrongdoing, realized that their conduct would substantially assist the accomplishment of that wrongdoing and were aware of their overall contribution to the conspiracy, common scheme and course of wrongful conduct alleged by plaintiffs.

83. By reason of the foregoing, the Company has sustained and will continue to sustain serious damage and irreparable injury, for which relief is sought herein.

84. Plaintiffs and the Company have no adequate remedy at law.

FIFTH CAUSE OF ACTION

(Declaratory Judgment)

85. Plaintiffs repeat and reallege each of the foregoing paragraphs as if fully set forth herein.

86. This claim is asserted derivatively on behalf of Disney against all of the Individual Defendants.

87. As is alleged in detail above, the terms of the Employment Agreement between Disney and defendant Ovitz are oppressive and unfair and amount to a breach of the fiduciary duties of care, loyalty and good faith owed by the members of the Old Board to Disney. The Former Director Defendants voted in favor of and/or attempted to ratify the Employment Agreement although it amounted to a waste of Disney's assets and a breach of the fiduciary obligations that they owed to the Company.

88. Any actions undertaken by the Former Director Defendants in voting for and/or ratifying the Employment Agreement were invalid because of the patently wasteful and unconscionable nature of that contract. Accordingly, the Employment Agreement was void ab initio, and contrary to law.

89. Alternatively, the Current Director Defendants have breached the fiduciary duties of care, loyalty and good faith that they owe to Disney by failing to declare Ovitz's termination as Disney's President a "for cause" termination as that term is defined in the Employment Agreement, and thereby severely limiting (or avoiding) the payments to be made to Ovitz. Because of: (a) Ovitz's brief and inadequate service as a Disney executive; (b) Ovitz's failure to satisfy the terms of the Employment Agreement by

properly and effectively performing his duties as President; and (c) the public reports that Ovitz was searching for alternative employment prior to the time his "resignation" from Disney was announced, Ovitz's "resignation" fits within the definition of a "for cause" termination, as defined in the Employment Agreement. The only financial benefits to which he is entitled under the Employment Agreement are therefore the much lesser payments provided in the event of a "for cause" termination.

90. Plaintiffs are therefore entitled to a declaratory judgment, pursuant to 10 Del. C. § 6501 declaring the Employment Agreement void ab initio or, alternatively, declaring Ovitz' resignation a "for cause" termination within the meaning of the Employment Agreement or otherwise determining that any severance payments owed to Ovitz are less than has been agreed. An actual controversy exists as to these matters.

WHEREFORE, plaintiffs demand judgment in their favor and in favor of the Company against all of the Individual Defendants as follows:

A. Declaring that the Individual Defendants have violated their fiduciary duties to the Company and have wasted the Company's assets;

B. Declaring that the Employment Agreement is null and void because it amounts to a waste of the Company's assets and a breach of the Individual Defendants' fiduciary duties of care, loyalty and good faith;

C. Alternatively, declaring the termination of Ovitz's employment by Disney a "for cause" termination as defined in the

Employment Agreement and/or that any severance payments thereunder have been forfeited or diminished due to Ovitz's failure to perform in accordance with the Employment Agreement;

D. Enjoining the Individual Defendants and all other persons from undertaking any steps to abide by the terms of the Employment Agreement;

E. Enjoining defendant Ovitz from taking any steps to receive remuneration pursuant to the Employment Agreement, including any action necessary to exercise the stock options to which he is purportedly entitled under the Employment Agreement;

F. Ordering the Individual Defendants to account for all damages caused by them and all profits and unjust enrichment they obtained as a result of their unlawful conduct and imposing a constructive trust thereon;

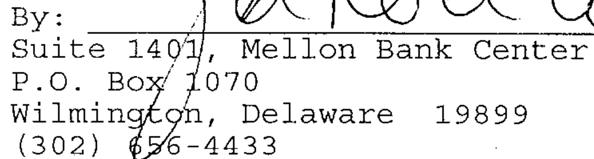
G. Freezing or sequestering any compensation paid to Ovitz in connection with his separation from Disney until the instant lawsuit is resolved;

H. Alternatively, awarding compensatory or rescissory damages against the Individual Defendants jointly and severally in an amount to be determined at trial, together with pre-judgment interest at the maximum rate allowable by law;

I. Awarding plaintiffs the costs and disbursements of this action, including a reasonable allowances for plaintiffs' attorneys' and experts' fees and expenses; and

J. Granting such other or further relief as may be just and proper under the circumstances.

ROSENTHAL, MONHAIT, GROSS
& GODDESS, P.A.



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